



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 1, 1960

Honorable Edwin L. Keller
County Attorney
Erath County
Stephenville, Texas

Opinion No. WW-928

Re: Taxable status of land
devised to Tarleton State
College for designated pur-
poses and presently rented
to an individual not
connected with the college.

Dear Mr. Keller:

In your recent letter requesting our opinion upon the referenced subject, you outline the fact situation prompting such inquiry as follows:

"In regard to the above question, the facts are that D. G. Hunewell and Fannie Eales Hunewell, husband and wife, left a written will by which they devised farming and ranch lands in Erath County to Tarleton State College, but in trust to persons who at the death of the survivor composed the board of directors governing such college as trustees for the use and benefit of Tarleton State College empowering the trustees to administer the trust and donation including the income from such property and to apply the same to the purpose or purposes set out in the will, and such donation and any fund or property arising therefrom to be called the Hunewell Band Fund, empowering the trustees to hold, mortgage, manage, control, exchange, lease, alienate, invest or reinvest in any way the whole or any part of such donation and to collect the proceeds and income and to pay out the income, or if insufficient, to pay out of the principal all expenses of the trust in carrying out the purpose thereof and such purpose being the attraction of good band material for Tarleton College and to encourage Tarleton band men to exert themselves and show their best ability, a direction was made for a cash award of \$200.00 to be given to each band man not

to exceed ten each year and excess revenue for the purposes to improve the band, such as instruments, band house, uniforms, etc.

"It is provided in the will that neither the donation nor any fund or property arising therefrom, should ever be any part of the permanent fund of Tarleton State College.

". . . .

"The provision of the will in question which prohibited the above mentioned donation of property arising therefrom from ever becoming a part of the permanent Tarleton State College Fund also provided that the Legislature should have no power or be in anywise authorized to change the purposes of the will and trust nor to divert such donation, fund or property from the purposes set out."

You had informed us previously that the land is presently rented to an individual not connected with the college, and requested that we advise you whether or not the land is taxable by State, County and District authorities. It is our opinion that this property is exempt from taxation.

The buildings, land and equipment of John Tarleton Agricultural College was officially donated to and accepted by the State, thus becoming a part of the State's educational system. Acts 1917, 35th Leg., Ch. 33, p. 58 (Arts. 2616-2619, V.A.C.S.). Its name was thereupon changed to Tarleton State College. Art. 2616a, V.A.C.S.

In State v. University of Houston, 264 S.W.2d 153 (Tex.Civ.App. 1954, err.ref. n.r.e.), it was held that producing mineral interests in land belonging to the University of Houston were exempt from taxation and thus could not be taxed by appellants, which included the State, County, common school districts, a road district, and a drainage district. While the reasoning of the Court in the opinion is somewhat obscure, it apparently held that the property was public property of the State of Texas held by the University of Houston as an agency of the State, and used solely for the benefit of the public, thus bringing it within the scope of Arts. 7150, subdivision 4, and 2815 k. R.C.S., Art. VIII, sec. 2 and Art. XI, sec. 9, Constitution of Texas. See XI Baylor Law Review No. 2 (Spring, 1959), p. 142.

In Attorney General's Opinion No. O-1861 (1939), it was held that land devised to the Board of Regents of the University

of Texas to be used for certain purposes designated in the will for the benefit of the University, which land was rented to outside interests with the revenue therefrom dedicated to the designated purposes, was exempt from taxation as property belonging to the State.

Considering the University of Houston case and Opinion No. 0-1861 together, we believe that the property you describe, although devised substantially in trust to the board of directors of Tarleton State College for designated purposes only, must be considered as tax-exempt property under the previously cited statutes and Constitutional provisions.

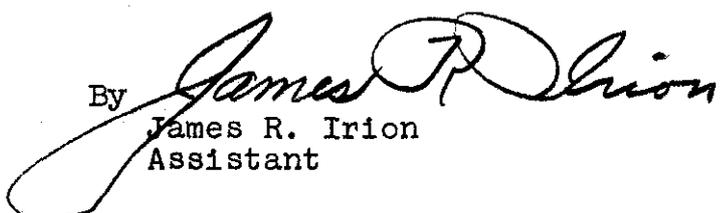
SUMMARY

Certain described land, devised to the board of directors of Tarleton State College for certain purposes benefiting the college and presently rented to an individual not connected with the college, is entitled to tax exemption and is therefore not taxable by State, County, or district authorities.

Yours very truly,

WILL WILSON
Attorney General of Texas

By



James R. Irion
Assistant

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APPROVED:

OPINION COMMITTEE:
W. V. Geppert, Chairman

Thomas Burrus
Paul W. Floyd, Jr.
B. H. Timmins, Jr.

REVIEWED FOR THE ATTORNEY GENERAL
By: Houghton Brownlee